LAR 1.0 SCOPE AND TITLE OF RULES

1.1 Scope and Organization of Rules

The following Local Appellate Rules (LAR) are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (FRAP) and apply to procedure in this court. The numbering of the Local Appellate Rules has been organized to follow the numbering system of the Federal Rules of Appellate Procedure in order to increase public accessibility to the Rules. Where a local rule has no counterpart in the Federal Rules of Appellate Procedure it is classified as a Miscellaneous Rule. The Miscellaneous Local Appellate Rules begin with Rule 101.0.

Source: 1988 Court Rule 1.1

Cross-references: 28 U.S.C. § 2072; FRAP 1, 47

Committee Comments: The Local Appellate Rules bind all litigants in this court. Each Local Appellate Rule is numbered to correspond to its counterpart in the Federal Rules, e.g., Local Appellate Rule 1.0 corresponds to Federal Rule of Appellate Procedure 1. Cross-references are provided for convenience and are not intended to be exhaustive. Committee Comments are provided by the court's Rules Committee and are intended to guide, but not bind, litigants in this court.

1.2 Title; Citation Form

These rules may be known as the Third Circuit Local Appellate Rules, and cited as 3rd Cir. LAR __._ (1997).

Source: None

Cross-references: FRAP 1

Committee Comments: The Local Rules Project of the Judicial Conference Committee on Rules and Practice recommends that all courts of appeals follow a uniform numbering and citation system, for ease of reference and indexing of local rules. This court follows the recommendation of the Local Rules Project.

LAR 3.0 APPEAL AS OF RIGHT - HOW TAKEN

3.1 Notice To Trial Judge; Opinion In Support Of Order

At the time of the filing of the notice of appeal, the appellant shall mail a copy thereof by ordinary mail to the trial judge. Within 15 days thereafter, the trial judge may file and mail to the parties a written opinion or a written amplification of a prior written or oral recorded ruling or opinion. Failure to give notice of the appeal to the trial judge shall not affect the jurisdiction of this court.

Source: 1988 Court Rules 8.4

Cross-References: FRAP 3, 24, Form 1, Form 3

Committee Comments: A district court may properly prepare an opinion or memorandum explaining a decision after an appeal is taken. The rule is not intended to inhibit or discourage district courts from preparing opinions as they presently do. To the contrary, the rule was designed to provide more flexibility. Prior Court Rule 8.4 has been amended to apply to all appellants, not simply pro se habeas corpus petitioners. Otherwise, no substantive change from prior Court Rule 8.4 is intended. This rule does not authorize a trial judge to change a prior ruling except as provided by rule 5.9.

3.2 Joint Notice of Appeal

When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. Parties filing a joint notice of appeal shall file a single consolidated brief and appendix.

Source: None

Cross-references: FRAP 3(b), 28(i), 31

Committee Comments: New provision.

3.3 Payment of Fees

(a) If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant shall pay the fee within fourteen (14) days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(b) If an action has been dismissed pursuant to 28 U.S.C. § 1915 as frivolous or malicious, or if the district court certifies pursuant to § 1915(a) and FRAP 24(a) that an appeal is

not taken in good faith, the appellant may either pay the applicable docketing fee or file a motion to proceed in forma pauperis within 14 days after docketing. If appellant fails to either pay the applicable docketing fee or file the motion to proceed in forma pauperis, the clerk is authorized to dismiss the appeal 30 days after docketing of the appeal.

Source: 1988 Court Rule 28.1

Cross-References: 28 U.S.C. §1915; FRAP 3(a), 24(a); 3rd Cir. LAR 39.2, Misc. 107.2(a)

Committee Comments: Subsection (b) is a new provision which codifies existing practice. Subsection (b) is not intended to preclude a litigant who did not seek leave to proceed in forma pauperis in the district court from requesting leave to proceed in forma pauperis in the court of appeals.

3.4 Notice of Appeal in Pro Se Cases

The court shall deem a paper filed by a pro se litigant after the decision of the district court in a civil, criminal, or habeas corpus case to be a notice of appeal despite informality in its form or title, if it evidences an intention to appeal. The court shall deem an application for leave to appeal in forma pauperis or an application to this court for a certificate of appealability to be a notice of appeal if no formal notice has been filed. The grant or denial of a certificate of appealability by the district court shall not be treated as a notice of appeal.

Source: 1988 Court Rules 8.1, 8.3

Cross-References: 28 U.S.C. §2253; F.R.A.P. 3, 22(b), 24, Form 1, Form 3

Committee Comments: This rule is designed to emphasize that the jurisdictional requirement of a notice of appeal is met in a pro se case by the filing of either an informal document or a request for certificate of appealability or a motion for in forma pauperis status in this court, but not by the mere granting or denial by the district court of a certificate of appealability. The portions of prior Court Rule 8 that were repetitive of F.R.A.P. 3 and 4 have been deleted; otherwise no substantive change from prior Court Rule 8 is intended. Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act. This rule takes no position on the question of whether a district court can grant or deny a certificate of appealability.

LAR 4.0 APPEAL AS OF RIGHT - WHEN TAKEN

4.1 Expedited Appeals

A party who seeks an expedited appeal shall file a motion within fourteen (14) days of the notice of appeal setting forth the exceptional reason that warrants expedition. If an emergency arises thereafter, the moving party shall file the motion within fourteen (14) days of the emergency. Motions seeking an expedited appeal shall include a proposed briefing schedule that has been agreed upon by the parties if possible, but if they cannot agree, they should submit their own proposals with reasons. A response in opposition, if any, to expedited treatment shall be filed within seven (7) days after service of the motion to expedite and any reply within three (3) days after service of the response unless otherwise directed by the court.

Source: None

Cross-references: F.R.A.P. 4

Committee Comments: New provision. This rule has been added to emphasize that a request for an expedited appeal should be made promptly.

LAR 5.0 APPEALS BY PERMISSION UNDER 28 U.S.C. § 1292(b) [ABROGATED]

5.1 Petition for Permission to Appeal [Abrogated]

Reason for elimination of LAR. 5.1: Fed. R. App. P. 5(b), which sets forth the contents of a petition for permission to appeal, requires that the petition include "the question itself." This requirement makes L.A.R. 5.1 unnecessary.

LAR 8.0 STAY OR INJUNCTION PENDING APPEAL

8.1 Motion for Stay in Court of Appeals

A motion for a stay of the judgment or order of a district court or the United States Tax Court pending appeal, for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal shall include a copy of any relevant judgment, decision, or order of the district court or the United States Tax Court and any accompanying opinion. Failure to do so shall be grounds for dismissal of the motion.

Source: 1988 Court Rules 11.2, 11.4

Cross-references: FRAP 8, 18, 27; 3rd Cir. LAR 18.0, 27.0

Committee Comments: This rule has been revised to apply to judgments and orders of the United States Tax Court as well as the United States District Court. Otherwise, no substantive change from prior Court Rules 11.2 or 11.4 is intended.

8.2 Death Penalty Cases

Except as provided in 28 U.S.C. § 2262, the provisions of 3rd Cir. LAR Misc. 111.0 shall govern all stay proceedings in death penalty cases, including appeals from the grant or denial of a petition under 28 U.S.C. §§ 2254 or 2255, applications to file a second or successive petition under 28 U.S.C. §2244 and/or § 2255, and in original habeas corpus actions challenging a conviction in which a sentence of death has been imposed.

In a direct appeal of conviction or sentence in a criminal case in which the district court has imposed a sentence of death, the sentence shall be stayed pending appeal.

Source: None

Cross-references: F.R.A.P. 8, 22; Fed. R. Crim. Pro. 38(a); 3rd Cir. LAR Misc. 111.0

Committee Comments: New provision. To the extent consistent with F.R.A.P. and applicable statutes, all local procedure in death penalty proceedings will be governed by 3rd Cir. LAR Misc. 111.0. Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act.

LAR 9.0 RELEASE IN CRIMINAL CASES

9.1 Appeals of Orders Relating to Release or Detention; Release Before Judgment of Conviction

(a) Appeals of Orders Relating to Release or Detention Before Judgment of Conviction: An appeal from an order granting or denying release from custody with or without bail or for detention of a defendant prior to judgment of conviction shall be by motion filed either concurrently with or promptly after filing a notice of appeal. The movant shall set forth in the body of the motion the applicable facts and law and attach a copy of the reasons given by the district court for its order. The opposing party may file a response within three (3) days after service of the motion, unless the court directs that the time shall be shortened or extended.

(b) Release After Judgment of Conviction: Requests for release from custody or for detention of a defendant after judgment of conviction shall be by motion filed expeditiously. The time periods and form requirements set forth in 3rd Cir. LAR 9.1(a) are applicable to such motions.

Source: 1988 Court Rules 11.3, 11.4

Cross-references: FRAP 9, 27; 3rd Cir. LAR 27.0

Committee Comments: No substantive change is intended from prior Court Rule 11.3.

LAR 11.0 TRANSMISSION OF THE RECORD

11.1 Duty of Appellant

Within ten (10) days after filing a notice of appeal, the appellant shall deposit with the court reporter the estimated cost of the transcript of all or the necessary part of the notes of testimony taken at trial. Where an appellant cannot afford the cost of transcripts, counsel for appellant, or the appellant pro se, shall make application to the district court within 10 days of the notice of appeal for the provision of such transcript pursuant to 28 U.S.C. §753(f). If the district court denies the application, appellant shall, within 10 days of the order denying the application, either deposit with the court reporter the fees for such transcript or apply to the court of appeals for the transcript at government expense. Failure to comply with this rule shall be grounds for dismissal of the appeal.

Source: 1988 Court Rule 15.1

Cross-references: 28 U.S.C. § 753(f); FRAP 10(b), 11(a); 3rd Cir. LAR 10.1(b), Misc. 107.1(b)

Committee Comments: No substantive change from prior Court Rule 15.1 is intended. The rule codifies current practice.

11.2 Retention of the Record in the District Court

A certified copy of the docket entries in the district court shall be transmitted to the clerk of this court in lieu of the entire record in all counseled appeals. In all pro se cases, the entire record, including briefs filed in support of dispositive motions, shall be certified and transmitted to the clerk of this court. The clerk of the district court shall transmit the entire district court record in any state habeas case or habeas case emanating from any territorial courts, whether counselled or pro se. In such cases, the clerk of the district court shall transmit to the court of appeals any state or territorial records lodged with the district court during its determination of the habeas case.

Source: 1988 Court Rule 14.1

Cross-references: FRAP 11(e); 22(b)

Committee Comments: No substantive change from current practice or prior Court Rule 14.1 is intended. The granting of a motion to proceed on the original record exempt a litigant from filing an appendix. Transmission of the record by the district court to the court of appeals is not a prerequisite to the granting of such motion. The fact that the district court clerk has transmitted the record to the court of appeals does not dictate the granting of the motion.

LAR 15.0 REVIEW OR ENFORCEMENT OF AGENCY ORDERS - HOW OBTAINED; INTERVENTION

15.1 Brief and Argument in Enforcement and Review Proceedings

In any enforcement or review proceeding with respect to an order or action of a federal agency or board, each party adverse to the agency or board shall be considered to be the petitioner(s) and the federal agency or board to be the respondent, solely for the procedural purposes of briefing and oral argument, unless the court orders otherwise. Nothing in this rule shall have the effect of changing or modifying the burden of the agency or board of establishing its right to enforcement.

Source: 1988 Court Rule 26.1

Cross-references: FRAP 15

Committee Comments: The portions of prior Court Rule 26.1 that were repetitive of FRAP 15 have been deleted. This rule has been designed to expand the procedure which FRAP 15.1 limits to a single agency, the National Labor Relations Board, to encompass all federal administrative agencies.

LAR 18.0 STAY PENDING REVIEW

18.1 Stay of an Order or Decision of an Agency

An application to this court for stay of the judgment or order of an agency pending review, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal shall include a copy of the relevant judgment, decision, or order of the agency and any accompanying opinion. Failure to do so shall be grounds for dismissal of the motion.

Source: 1988 Court Rules 11.2, 11.4

Cross-references: FRAP 8, 18, 27; 3rd Cir. LAR 27.0

Committee Comments: No substantive change from prior Court Rules 1.2 or 11.4 is intended.

LAR 22.0 HABEAS CORPUS PROCEEDINGS

22.1 Necessity of Certificate of Appealability

(a) When a certificate of appealability is required, a formal application should be filed with the court of appeals, but the court may deem a paper filed by a habeas corpus petitioner that discloses the intent to obtain appellate review to be an application for a certificate of appealability, regardless of its title or form. If an application is not filed with the notice of appeal, the appellant may file and serve an application within 21 days of either the docketing of the appeal in the court of appeals or of the entry of the order of the district court denying a certificate, whichever is later. The respondents may, but need not unless directed by the court, file a memorandum in opposition to the granting of a certificate, within 14 days of service of the application. The appellant may, but need not, file a reply within 10 days of service of the response. The length and form of any application, response, or reply must conform to the requirements of Fed. R. App. P. 27 governing motions.

(b) If the district court grants a certificate of appealability as to only some issues, the court of appeals will not consider uncertified issues unless petitioner first seeks, and the court of appeals grants certification of additional issues. Petitioners desiring certification of additional issues must file, in the court of appeals, a separate motion for additional certification, along with a statement of the reasons why a certificate should be granted as to any issue(s) within 21 days of the docketing of the appeal in the court of appeals. Respondents may file a memorandum in opposition within 14 days of service of the application. Petitioner's reply, if any, must be filed within 10 days of the service of the response. The length and form of any application, response, or reply, must conform to the requirements of Rule 27, Fed. R. App. Pro. governing motions. The order of the motions panel must be attached to the brief. If the motions panel denies the motion to certify additional issues, the parties may brief only the issues certified. The merits panel may direct briefing of any additional issues it wishes to consider.

Source:	1988 Court Rule 13.1
Cross-references:	28 U.S.C. § 2253; F.R.A.P. 3, 22; 3rd Cir. L.A.R. 3.4
Committee Comments:	The portions of prior Court Rule 13 that were repetitive of F.R.A.P. 22 have been deleted; otherwise no substantive change from prior Court Rule 13.1 is intended. Technical changes were made to conform to Fed. R. App. P. 27. The response time was lengthened to permit litigants sufficient time to file an application or response.

22.2 Statement of Reasons for Certificate of Appealability

At the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued, the district judge shall make a determination as to whether a certificate of appealability should issue. If the district judge issues a certificate, the judge shall state the specific issue or issues that satisfy the criteria of 28 U.S.C. § 2253. If an order denying a petition under § 2254 or § 2255 is accompanied by an opinion or a magistrate judge's report, it is sufficient if the order denying the certificate references the opinion or report. If the district judge has not made a determination as to whether to issue a certificate of appealability by the time of the docketing of the appeal, the clerk shall enter an order remanding the case to the district court for a prompt determination as to whether a certificate should issue.

Source: F.R.A.P. 22

Cross-references: 28 U.S.C. §§ 2253, 2254, 2255; F.R.A.P. 22

Committee Comments: Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act. This rule takes no position on the question of whether a district court can grant or deny a certificate of appealability.

22.3 Review of Application for Certificate of Appealability

An application for a certificate of appealability will be referred to a panel of three judges. If all the judges on the panel conclude that the certificate should not issue, the certificate will be denied, but if any judge of the panel is of the opinion that the applicant has made the showing required by 28 U.S.C. § 2253, the certificate will issue.

Source: F.R.A.P. 22

Cross-references: 28 U.S.C. § 2253; F.R.A.P. 22

Committee Comments: Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act.

22.4 Death Penalty Cases

The provisions of 3rd Cir. LAR Misc. 111.0 shall govern all appeals from the grant or denial of a petition for writ of habeas corpus or original habeas corpus proceedings challenging a conviction in which a sentence of death has been imposed.

Source: None

Cross-references: F.R.A.P. 8, 22; 3rd Cir. LAR 8.0, Misc. 111.0

Committee Comments: New provision. To the extent consistent with F.R.A.P. and applicable, local procedure in all death penalty proceedings will be governed by 3rd Cir. LAR Misc. 111.0.

22.5 Application for Authorization to File a Second or Successive Petition Under 28 U.S.C. § 2254 or § 2255

(a) Forms for filing an application to file a second or successive petition under 28 U.S.C. § 2254 or § 2255 are available from the clerk. If the form application is not used, the application must contain the information requested in the form. The application must be accompanied by:

(1) the proposed new § 2254 or § 2255 petition;

(2) copies of all prior § 2254 or § 2255 petitions;

(3) copies of the docket entries in all prior § 2254 or § 2255 proceedings;

(4) copies of all magistrate judge's reports, district court opinions and orders disposing of the prior petitions; and

(5) any other relevant documents.

(b) The application may be accompanied by a memorandum, not exceeding 20 pages, clearly stating how the standards of § 2244(b) and/or § 2255 are satisfied

(c) The movant shall serve a copy of the application for authorization to file a second or successive petition and all accompanying attachments on the appropriate respondent.

(d) Any response to the application must be filed within 7 days of the filing of the application with the clerk.

(e) If the court determines that the motion and accompanying materials are not sufficiently complete to assess the motion, the court may deny the motion with or without prejudice to refiling or may in its discretion treat the motion as lodged, the filing being deemed complete when the deficiency is remedied.

(f) The clerk shall transmit a copy of any order granting authorization to file a second or successive petition to the appropriate district court together with a copy of the petition.

(g) No filing fee is required for an application to file a second or successive petition. If the application is granted, the filing of the petition in the district court will be subject to the requirements of 28 U.S.C. § 1915(a).

(h) If the district court enters an order transferring to the court of appeals an application to file a second or successive petition or a § 2254 or § 2255 petition that the district court deems to be a second or successive petition requiring authorization, the clerk of the district court shall promptly transmit the record to the court of appeals. The record shall include the documents listed in part (a)(1) through (5) of this rule. The clerk of the district court shall transmit copies of its order of transfer and any necessary documents to the appropriate respondent.

(i) If a case transferred by the district court does not contain a statement by the applicant as to how the standards of § 2244(b) and/or § 2255 are satisfied, the director of the Staff Attorneys Office may direct the applicant to file a memorandum clearly stating how the statutory standards are met. Failure to file a memorandum as directed will result in the dismissal of the case by the clerk without further notice. If the applicant files a memorandum as directed, the time prescribed in § 2244(b)(3)(D) for deciding the application will run from the date the memorandum is filed.

(j) If an appeal is taken in a case in which the district court issued an order denying a petition under § 2254 or § 2255 on the grounds that it is a second or successive petition that requires authorization under § 2244, the record on appeal transmitted to this court shall include the documents listed in part (a)(1) through (5) of this rule.

Source:	F.R.A.P. 22
Cross-references:	28 U.S.C. §§ 2244, 2253, 2254, 2255; F.R.A.P. 22
Committee Comments:	Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act.

LAR 24.0 PROCEEDINGS IN FORMA PAUPERIS

24.1 Documents Required with Application

In cases in which 28 U.S.C. § 1915(b) applies, prisoners seeking to proceed on appeal in forma pauperis shall file the following documents in the court of appeals:

(a) an affidavit of poverty that includes the amount in the prisoner's prison account;

(b) a certified copy of the prison account statement(s) (or institutional equivalent) for the 6 month period immediately preceding the filing of the notice of appeal; and

(c) a signed form authorizing prison officials to assess and deduct the filing fees in accordance with 28 U.S.C. § 1915(b).

Source: None

Cross-references: 28 U.S.C. § 1915

Committee Comments: Technical changes were made to conform to the Prison Litigation Reform Act.

24.2 Failure to file

Failure to file any of the documents specified in Rule 24.1 will result in the dismissal of the appeal by the clerk under LAR Misc. 107.1(a).

Source: None

Cross-references: LAR Misc. 107.1(a)

Committee Comments: None

24.3 Issuance of Order

If the affidavit in support of a motion to proceed in forma pauperis demonstrates that the appellant qualifies for in forma pauperis status and the appellant is not precluded from proceeding in forma pauperis under 28 U.S.C. § 1915(g), the director of the Staff Attorneys Office or clerk will issue an order granting in forma pauperis status. If 28 U.S.C. § 1915(b) applies, the order shall direct prison officials to assess and deduct the filing fees in accordance with the statute and transmit such fees to the appropriate district court. The clerk shall send a copy of the order to the prisoner, the warden of the prison where appellant is incarcerated, and the appropriate district court.

Source:	None
Cross-references:	28 U.S.C. § 1915
Committee Comments:	Technical changes were made to conform to the Prison Litigation Reform Act.

LAR 25.0 FILING AND SERVICE

25.1 Facsimile Filing

Papers may not be filed by facsimile without prior authorization by the clerk. Authorization may be secured only in situations determined by the clerk to be of an emergency nature or other compelling circumstance. In such cases, the original signed document must be filed promptly thereafter.

Source: None

Cross-references: None

Committee Comments: New provision.

LAR 26.1.0 CORPORATE DISCLOSURE STATEMENT

26.1.1 Disclosure of Corporate Affiliations and Financial Interest

(a) Promptly after the notice of appeal is filed, each corporation that is a party to an appeal, whether in a civil, bankruptcy, or criminal case, shall file a corporate affiliate/financial interest disclosure statement on a form provided by the clerk that identifies every publicly owned corporation not named in the appeal with which it is affiliated. The form shall be completed whether or not the corporation has anything to report.

(b) Every party to an appeal shall identify on the disclosure statement required by FRAP 26.1 every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. The form shall be completed only if a party has something to report under this section.

(c) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy estate shall promptly provide to the clerk in writing a list identifying (1) the debtor, if not named in the caption, (2) the members of the creditors' committees or the top 20 unsecured creditors, and (3) any entity not named in the caption which is an active participant in the proceeding. If the debtor or trustee of the bankruptcy estate is not a party, the appellant shall file this list with the clerk.

Source:	1988 Court Rule 25
Cross-references:	28 U.S.C. § 455; FRAP 26.1
Committee Comments:	Subsection (c) is new. Prior Court Rule 25 imposed an obligation upon all parties to civil or bankruptcy cases and all corporate defendants in criminal cases to file a corporate affiliate/financial interest disclosure statement. 3rd Cir. LAR 26.1.1(a) limits that obligation to corporate parties only. The rule also provides that the statement shall be filed promptly after the notice of appeal is filed, and shall be made on a form provided by the clerk. 3rd Cir. LAR 26.1.1(b) retains the requirement that every party to an appeal disclose the identity of every publicly owned corporation, not a party to an appeal, that has a financial interest in the outcome of the litigation. The revised rule specifies that, under these circumstances, a negative report need not be filed.

26.1.2 Notice of Possible Judicial Disqualification

If any judge of this court participated at any stage of the case, in the trial court or in related state court proceedings, appellant, promptly after filing the notice of appeal, shall separately notify the clerk in writing of the judge and the other action, and shall send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the clerk if, for any reason, appellant fails to comply with this rule fully and accurately.

Source:	1988 Court Rule 19.1
Cross-references:	28 U.S.C. §§ 144, 455; FRAP 26.1
Committee Comments:	Prior Court Rule 19.1 required appellant to notify the clerk of a possible judicial disqualification when filing the opening brief. 3rd Cir. LAR 26.1.2 now requires appellant to notify the clerk of such disqualification promptly after filing the notice of appeal. 3rd Cir. LAR 26.1.2 adds a new requirement that appellee notify the clerk of any possible disqualification if appellant fails to do so.

LAR 27.0 MOTIONS

27.1 No Oral Argument Except When Ordered

Motions are considered and decided by the court upon the motion papers and briefs without oral argument unless ordered by the court or a judge thereof. Counsel may assume there will not be oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Source: 1988 Court Rule 11.1

Cross-references: FRAP 8, 9, 18, 21, 27, 34, 40; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: No substantive change from prior Court Rule 11.1 is intended.

27.2 Service

Motions shall ordinarily be served on other parties by means equally expeditious to those used to file the motion with the court. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the court acts (as in certain emergency motions), the moving party should notify such other parties by telephone or facsimile of the filing of the motion.

Source: None

Cross-references: FRAP 8, 9, 18, 25, 27, 41; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: New provision. The seven-day period for filing a response provided by FRAP 27(a) runs from the time of service. If service is not effectuated promptly, the disposition of the motion may be delayed or parties opposing the motion may not have an opportunity to respond before the court rules on the motion.

27.3 Uncontested Motions

Each uncontested motion shall be certified as uncontested by counsel. In the absence of a timely response, the court may treat a motion without such certification as uncontested.

Source: None

Cross-references: FRAP 8, 9, 18, 27, 41; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: New provision. The seven-day period for filing a response provided by FRAP 27(a) is unnecessary where a motion is uncontested. A certification to that effect will aid in the speedy disposition of the motion.

27.4 Motions for Summary Action

A party may move for summary action affirming, enforcing, vacating, remanding, modifying, setting aside or reversing a judgment, decree or order, alleging that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. In addition, the court may sua sponte list a case for summary action.

Source: Third Circuit Internal Operating Procedures 10.6 (1990)

Cross-references: 28 U.S.C. §2106; FRAP 27; Third Circuit Internal Operating Procedure 10.6 (1994)

Committee Comments: No substantive change from current practice or IOP 10.6 is intended. The filing of a motion for summary action does not stay the regular briefing schedule set forth in FRAP 31(a).

27.5 Powers Of Single Judge

A single judge of the court may not grant or deny a motion that the court has ordered to be acted on by the court or a panel thereof, and ordinarily a single judge will not entertain and grant or deny a motion for release or for modification of the conditions of release pending review in a criminal case, a motion for leave to intervene, or a motion to postpone the oral argument in a case which has been included by the clerk in the argument list for a particular weekly session of the court. The action of a single judge may be reviewed by a panel of the court.

Source: 1988 Court Rule 2.4

Cross-references: FRAP 27(c); Third Circuit Internal Operating Procedure 10.5 (1994)

Committee Comments: Prior Court Rule 2.4 provided that a single judge could not entertain a motion for leave to file a brief as amicus curiae or a motion that a party requests be heard orally by the Court. 3rd Cir. LAR 27.5 removes these restrictions and permits a single judge to entertain such motions.

27.6 Motions Decided By The Clerk

If the court so orders, the clerk may entertain and dispose of any motion that can ordinarily be disposed of by a single judge of this court under the provisions of FRAP 27(c) and 3rd Cir. LAR 27.5, provided the subject of the motion is ministerial, relates to the preparation or printing of the appendix and briefs on appeal, or relates to calendar control. If application is promptly made, the action of the clerk may be reviewed in the first instance by a single judge or by a panel of the court.

Source: 1988 Court Rule 11.5

Cross-references: FRAP 27

Committee Comments: No substantive change from prior Court Rule 11.5 is intended.

LAR 28.0 BRIEFS

28.1 Brief of the Appellant

(a) The brief of appellant/petitioner shall include, in addition to the sections enumerated in F.R.A.P. 28, the following:

(i) in the statement of the issues presented for review required by F.R.A.P. 28(a)(5), a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon;

(ii) a statement of related cases and proceedings, stating whether this case or proceeding has been before this court previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending or about to be presented before this court or any other court or agency, state or federal. If the party is aware of any previous or pending appeals before this court arising out of the same case or proceeding, the statement should identify each such case; and

(iii) See LAR 32.2(c) for other attachments to the brief.

(b) The statement of the standard or scope of review for each issue on appeal, i.e., whether the trial court abused its discretion; whether its fact findings are clearly erroneous; whether it erred in formulating or applying a legal precept, in which case review is plenary; whether, on appeal or petition for review of an agency action, there is substantial evidence in the record as a whole to support the order or decision, or whether the agency's action, findings and conclusions should be held unlawful and set aside for the reasons set forth in 5 U.S.C. § 706(2), should appear under a separate heading placed before the discussion of the issue in the argument section.

(c) The court expects counsel to exercise appropriate professional behavior in all briefs and to refrain from making ad hominem attacks on opposing counsel or parties.

Source:	1988 Court Rule 21.1
Cross-references:	F.R.A.P. 28-32, 39; 3rd Cir. L.A.R. 29-32, 39
Committee Comments:	3rd Cir. L.A.R. 28.1 contains a new requirement that the appellant must designate where in the proceedings each issue was preserved for appeal and a new requirement that the appellant's brief must include a copy of the opinion, decision, or order being appealed. Appellant should cite to the appendix, but if the matter is not reproduced, then to the original record. If the matter has not been

filed of record in the district court, appellant may cite to the original document. 3rd Cir. L.A.R. 28.1 no longer requires parties to file a separate statement with the Clerk's Office identifying any previous or pending appeals because such matters must be identified in the briefs. 3rd Cir. L.A.R. 28.1 also makes explicit for the first time the court's expectation that counsel will write briefs in a professional manner and refrain from making ad hominem attacks on the opposing side. The portions of prior Court Rule 21.1 that were repetitive of F.R.A.P. 28 have been deleted. See LAR 32.2(c) for permissible attachments to the brief.

28.2 Brief of the Appellee

The brief of the appellee or respondent shall conform to the requirements of FRAP 28(b) and 3rd Cir. LAR 28.1 (a)(ii), (b) and (c). If the appellee is also a cross-appellant, the appellee's brief shall also comply with rules 28.1(a)(i) and (a)(iii). The brief of an appellee who has been permitted to file one brief in consolidated appeals shall contain an appropriate cross reference index which clearly identifies and relates appellee's answering contentions to the specific contentions of the various appellants. The index shall contain an appropriate reference by appellee to the question raised and the page in the brief of each appellant.

Source: 1988 Court Rule 21.1

Cross-references: FRAP 28-32; 3rd Cir. LAR 29-32

Committee Comments: The portions of prior Court Rule 21.1 that were repetitive of FRAP 28 have been deleted. Otherwise no substantive change from prior Court Rule 21.1 is intended.

28.3 Citation Form; Certification

(a) In the argument section of the brief required by F.R.A.P. 28(a)(9), citations to federal opinions that have been reported shall be to the United States Reports, the Federal Reporter, the Federal Supplement or the Federal Rules Decisions, and shall identify the judicial circuit or district, and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer's Edition or United States Law Week in that order of preference. Citations to United States Law Week shall include the month, day and year of the decision. Citations to federal decisions that have not been formally reported shall identify the court, docket number and date, and refer to the electronically transmitted decision. Citations to services and topical reports, whether permanent or looseleaf, and to electronic citation systems, shall not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, the Federal

Supplement, or the Federal Rules Decisions. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court.

(b) For each legal proposition supported by citations in the argument, counsel shall cite to any opposing authority if such authority is binding on this court, e.g., U.S. Supreme Court decisions, published decisions of this court, or, in diversity cases, decisions of the applicable state supreme court.

(c) All assertions of fact in briefs shall be supported by a specific reference to the record. All references to portions of the record contained in the appendix shall be supported by a citation to the appendix, followed by a parenthetical description of the document referred to, unless otherwise apparent from context.

(d) Except as otherwise authorized by law, each party shall include a certification in the initial brief filed by that party with the court that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to 3rd Cir. LAR 46.1.

Source: 1988 Court Rule 21.1

Cross-references: 28 U.S.C. §§ 515, 517, 518; Third Circuit Internal Operating Procedure 9.1 (1994)

Committee Comments: Subsection (b) is new. It imposes upon each party the obligation to cite to authority that is binding on this court, whether that authority supports or opposes the party's propositions. Otherwise, no substantive change from prior Court Rule 21.1 is intended, including the court's longstanding practice of not requiring attorneys representing the United States, or any agency thereof, to be a member of the bar of this court.

28.4 Signing the Brief.

All briefs must be signed in accordance with the provision of LAR 46.4.

Source: Fed. R. Civ. P. 11

Cross-references: LAR 46.4

Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires signatures on all papers. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief to ensure that it complies with all federal and local rules. The requirement is interpreted broadly

and the attorney of record may designate another person to sign the brief. If a party is represented by multiple counsel, the signature from only one attorney of record is required.

28.5 Page Limitations in Cross Appeals.

The briefs in a cross appeal shall have the following page limitations:

1st brief (appellant's principal brief)	30 pages or compliance with F.R.A.P. 32(a)(7) (B) and (C).
2nd brief (appellee's answering brief in direct appeal, cross appellant's principal brief)	30 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C).
3rd brief (appellant's reply brief in direct appeal, cross appellee's answering brief)	30 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C).
4th brief (cross appellant's reply)	15 pages or compliance with Rule 32(a)(7)(B)(ii) and (C).

"Appellant" and "appellee" in cross appeals are defined in F.R.A.P. 28(h).

Source: None.

Cross-references: Fed. R. App. P. 28(h)

Committee Comments: New provision. This rule has been added for clarification of the page limitations.

LAR 29.0 AMICI CURIAE BRIEFS

29.1 Time for Filing Amici Curiae Briefs on Rehearing

In a case ordered for rehearing before the court en banc or before the original panel, if the court permits the parties to file additional briefs, any amicus curiae shall file its brief in accordance with Rule 29(e) of the Federal Rules of Appellate Procedure. In a case ordered for rehearing in which no additional briefing is directed, unless the court directs otherwise any amicus brief must be filed within 28 days after the date of the order granting rehearing, and any party may file a response to such an amicus brief within 21 days after the amicus brief is served. Before completing the preparation of an amicus brief, counsel for an amicus curiae shall attempt to ascertain the arguments that will be made in the brief of any party whose position the amicus is supporting, with a view to avoiding any unnecessary repetition or restatement of those arguments in the amicus brief.

Source: None.

Cross-references: Fed. R. App. P. 29(e).

Committee Comments: New provision.

LAR 30.0 APPENDIX TO THE BRIEFS

30.1 Number To Be Filed

Four copies of the appendix shall be filed, unless otherwise ordered. In Virgin Island cases only, one additional copy of the appendix shall be filed with the clerk of the district court in the location from which the appeal is taken (St. Thomas or St. Croix). When hearing or rehearing by the court en banc is ordered, the parties will be directed to file additional copies for the court's use.

Source: 1988 Court Rule 10.1

Cross-references: FRAP 30(a); 3rd Cir. LAR 31.1

Committee Comments: The portions of prior Court Rule 10.1 that were repetitive of FRAP 30(a) have been deleted. The rule now clarifies that upon the grant of a petition for rehearing, additional copies of the appendix as well as the briefs will be ordered. Otherwise no substantive change from prior Court Rule 10.1 is intended.

30.2 Hearing On Original Papers

In cases involving applications for a writ of habeas corpus under 28 U.S.C. §§ 2241, 2254 or 2255, or when permission has been granted for the appellant to proceed in forma pauperis, the appeal will be heard on the original record. Appellants in such cases must strictly comply with the requirements of 3rd Cir. LAR 32.2(c) with respect to inclusion of the trial court's opinion or order in the brief, and shall also include copies of the docket entries in the proceedings below and the notice of appeal. In any other case, this court, upon motion, may dispense with the requirement of an appendix and permit an appeal or petition to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

Source: 1988 Court Rule 10.2

Cross-references: FRAP 30(f)

Committee Comments: The requirement of prior Court Rule 10.2 that habeas corpus petitioners or appellants proceeding in forma pauperis attach to their briefs copies of the district court opinion or order appealed from has been deleted as repetitious of 3rd Cir. LAR 32.2(c). 3rd Cir. LAR 30.2 cautions such appellants of the importance of complying with 3rd Cir. LAR 32.2(c), and further requires them to attach copies of the docket entries below and notice of appeal to the opening brief.

30.3 Contents Of Appendix

(a) Relevant portions of a trial transcript, exhibit, or other parts of the record referred to in the briefs shall be included in the appendix at such length as may be necessary to preserve context. Transcript portions are not considered relevant under this rule merely because they are referred to in the Statement of the Case or Statement of Facts, if they are not otherwise necessary for an understanding of the issues presented for decision. Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the appendix shall reprint all the evidence of record which supports the challenged determination. In all appeals in this court, the appendix shall contain, in addition to the requirements of FRAP 30(a), a table of contents with page references and a copy of the notice of appeal.

(b) Records sealed in the district court and not unsealed by order of the court shall not be included in the appendix, but may be submitted in a separate, sealed volume of appendix.

(c) In an appeal challenging a criminal sentence, the appellant shall file, at the time of filing the appendix, four copies of the Presentence Investigation Report, in a sealed envelope appropriately labeled.

Source: 1988 Court Rule 10.3

Cross-references: FRAP 30(a), (b) and (f); 3rd Cir. LAR 32.0, Misc. 106.1(c)

Committee Comments: The portions of prior Court Rule 10.3 that were repetitive of FRAP 30 have been deleted. The portion of prior Court Rule 10.3 addressed to those cases in which the court by order has dispensed with the requirement of an appendix has also been deleted from this rule. Such cases are now addressed by 3rd Cir. LAR 30.2. Briefs submitted to the trial court or agency should not be included in the appendix unless the brief serves as evidence that an issue has been preserved or specifically waived. Trial exhibits which are important to the court's understanding of the issues should be reproduced either in the appendix or as exhibits to the brief. Where there is a multi-volume appendix, counsel should specify on the cover of each volume the pages contained therein, e.g., Vol. 2, pp. 358-722.

30.4 Deferred Appendix

The use of a deferred appendix pursuant to FRAP 30(c) is not favored.

Source: 1988 Court Rule 10.4

Cross-references: FRAP 30, 32; 3rd Cir. LAR 32.0

Committee Comments: No substantive change from prior Court Rule 10.4 is intended.

30.5 Sanctions Pursuant to F.R.A.P. 30(b)(2)

(a) The court, sua sponte by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion shall do so not later than ten (10) days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which shall be filed within ten (10) days after service of the motion or Rule to Show Cause.

Source: 1988 Court Rule 20.4

Cross-references: FRAP 30(b), 39; 3rd Cir. LAR Misc. 107.4

Committee Comments: No substantive change from prior Court Rule 20.4 is intended.

LAR 31.0 FILING AND SERVICE OF BRIEFS

31.1 Number of Copies to be Filed and Served

Unless otherwise required by this court, each party shall file ten (10) copies of each brief with the clerk and serve two (2) copies on counsel for each party separately represented. In Virgin Islands cases only, one additional copy of the briefs shall be filed with the clerk of the district court in the location from which the appeal is taken (St. Thomas or St. Croix). When hearing or rehearing by the court en banc is ordered, the parties will be directed to file additional copies for the court's use.

Source: 1988 Court Rule 21.2

Cross-references: FRAP 28-32; 3rd Cir. LAR 28-32

Committee Comments: No substantive change from prior Court Rule 21.2 is intended.

31.2 Appellee's Brief

A local, state or federal entity or agency, which was served in the district court and which is the appellee, must file a brief in all cases in which a briefing schedule is issued unless the court has granted a motion seeking permission to be excused from filing a brief. This rule does not apply to entities or agencies that are respondents to a petition for review unless the entity or agency is the sole respondent or to entities or agencies which acted solely as an adjudicatory tribunal.

Source: None

Cross-references: F.R.A.P. 28-32; 3rd Cir. L.A.R. 28-32

Committee Comments: New Rule 31.2 is intended to change the practice of some agencies who choose not to file briefs when they are named as appellee.

LAR 32.0 FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS

32.1 Forms of Briefs, Appendices, Motions, and Other Papers

All briefs, appendices, motions and other papers (collectively "papers") shall conform to the following requirements, unless otherwise provided by the FRAP:

(a) All papers shall be firmly bound at the left margin, and any metal fasteners or staples must be covered. All fasteners must have smooth edges. Use of backbones or spines without stapling is prohibited. Forms of binding such as velo binding and spiral binding are acceptable forms of binding.

(b) All papers shall have margins on both sides of each page that are no less than one (1) inch wide, and margins on the top and bottom of each page that are no less than three-quarters (3/4) of an inch wide.

(c) Typeface. Briefs shall comply with the provisions of F.R.A.P. 32(a)(5) and (6).

32.2 Form of Briefs and Appendices

(a) Excessive footnotes in briefs are discouraged. Footnotes shall be printed in the same size type utilized in the text.

(b) Where a transparent cover is utilized, the underlying cover sheet of the brief or appendix must nevertheless conform to the color requirements of F.R.A.P. 32(a)(2) and 32(b)(1).

(c) Volume one of the appendix must consist only of a copy of the notice of appeal, the order or orders being appealed and, if any, the relevant opinions of the trial court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge, or the decision of the administrative agency. No more than 25 additional pages may be included in volume one of the appendix. Volume one of the appendix may be bound in the brief and shall not be counted toward the page or type volume limitations on the brief. All other volumes of the appendix must be separately bound. Costs to the party entitled to them will be allowed for documents appended to the brief.

Source: 1988 Court Rule 21.2

Cross-references: Fed. R. App. P. 28-32; 3rd Cir. LAR 28-32

Committee Comments: The portions of prior Court Rule 21.2A that were repetitive of FRAP 32(a) have been deleted. Subsection (a) has been added to curtail the use of footnotes as a means to circumvent the page limitations set forth in FRAP. The Rule has been amended to require that additional relevant opinions be bound in the brief. Where there is a multi-volume appendix, counsel should specify on the cover of each volume the pages contained therein, e.g., Vol. 2, pp. 358-722.

32.3 Form of Motions and Other Papers Only

(a) Briefs and memoranda in support of or in opposition to motions need not comply with the color requirements of FRAP 32(a).

(b) Suggestions for rehearing en banc in which petitioner is represented by counsel shall contain the "Statement of Counsel" required by 3rd Cir. LAR 35.1. All petitions or suggestions seeking either panel rehearing or rehearing en banc shall include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

Source: 1988 Court Rules 21.2(B), 22 and 22.1

Cross-references: FRAP 27, 32, 40; 3rd Cir. LAR 27.0, 35.1 and 35.2

Committee Comments: The portions of prior Court Rules 21.2(B) and 22.1 that were repetitive of FRAP 32 have been deleted. Otherwise no substantive change from prior Court Rules 21.2(B) and 22.1 is intended.

L.A.R. 33.0 APPELLATE MEDIATION PROGRAM

33.1 Appellate Mediation Program

Appeals in civil cases and petitions for review or for enforcement of administrative action are referred to the Appellate Mediation Program to facilitate settlement or otherwise to assist in the expeditious handling of the appeal or petition. A special master shall serve as the program director and, in cooperation with the clerk, shall manage the Appellate Mediation Program. Mediations will be conducted by a senior judge of the court of appeals, a senior judge of a district court, the special master, or other person designated pursuant to Rule 48, F.R.A.P. Parties may confidentially request mediation by telephone or by letter directed to the special master. In all cases, however, the special master will determine which cases are appropriate for mediation and will assign the matter to a mediator.

33.2 Eligibility for Appellate Mediation Program

All civil appeals and petitions for review or for enforcement of agency action shall be eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or petitioner shall file with the clerk, within ten (10) days of the docketing of the appeal with service on all parties, an original and two (2) copies of a Civil Appeals Information Statement and a Concise Summary of the Case, on forms to be supplied by the clerk. Appellant shall attach to the Concise Summary of the Case copies of the order(s) being appealed and any accompanying opinion or memorandum of the district court or agency. In the event the order(s) being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached. In addition, any judge or panel of the court may refer to the special master any appeal, petition, motion or other procedural matter for review and possible amicable resolution.

33.3 Initial Screening and Deferral of Briefing for Cases Selected for Mediation

The Clerk will provide the special master with a copy of the judgment or order on appeal, any opinion or memorandum issued by the district court or agency, appellant's Civil Appeal Information Statement and Concise Summary of the Case and any relevant motions. Following review of these materials, the special master may refer an appeal or petition to a senior judge, himself or herself, or such other person designated pursuant to Rule 48, F.R.A.P. for mediation. The special master shall advise the parties, the chosen mediator, and the clerk of the referral.

If a case is referred to mediation, a briefing schedule shall be deferred during the pendency of mediation unless the court or special master determines otherwise. A referral to mediation shall not, however, defer or extend the time for ordering any necessary transcripts.

If a case is not accepted for mediation, or if accepted but is not resolved through mediation, it will proceed in the appellate process as if mediation had not been considered or initiated.

33.4 Referral of Matters to Mediation by a Judge or Panel of the Court

At any time during the pendency of an appeal or petition, any judge or panel of the court may refer the appeal or petition to the special master for mediation or any other purpose consistent with this rule. In addition, any judge or panel of the court may refer any appeal, petition, motion or other procedural matters for review and possible amicable resolution. The procedures set forth in LAR 33.4 are applicable to matters referred for mediation pursuant to LAR 33.3 unless otherwise directed by the special master. Documents, including but not limited to, those specified in LAR 33.4(a) may be required.

33.5 Proceedings After Selection for the Program

(a) Submission of Position Papers and Documents

Within fifteen (15) days of the case's selection for mediation by the special master, each counsel shall prepare and submit to the mediator a confidential position paper of no more than ten (10) pages, stating counsel's views on the key facts and legal issues in the case, as well as on key factors relating to settlement. The position paper will include a statement of motions filed in the court of appeals and their status. Copies of position papers submitted by the parties directly to the mediator should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the Clerk's Ofice and are not to be of record in the case.

(b) Mediation Sessions

The mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person or telephonically. Unless the mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each party responsible for the appeal and by the person or persons with actual authority to negotiate a settlement of the case. If settlement is not reached at the initial mediation session, but the mediator believes further mediation sessions or discussions would be productive, the mediator may conduct additional mediation sessions in person or telephonically.

(c) Confidentiality of Mediation Proceedings

The mediator shall not disclose to anyone statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to any court. The mediation proceedings shall be considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation shall not be considered confidential.

(d) Settlement

No party shall be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement, and counsel shall file a stipulation of dismissal of the appeal pursuant to Rule 42(b), F.R.A.P. Such a stipulation must be filed within thirty (30) days after settlement is reached unless an extension thereof is granted by the special master.

Source: New rule

Cross-references: None

Committee Comments: None

LAR 34.0 ORAL ARGUMENT

34.1 In General

(a) The court shall allow oral argument in all cases unless the panel, after examination of the briefs and records or appendices, is unanimously of the opinion that oral argument is not needed.

(b) Any party to the appeal shall have the right to file a statement with the court setting forth the reasons why, in the party's opinion, oral argument should be heard. Such statement shall be filed with the clerk within seven (7) days after the filing of appellee's or respondent's brief. The request shall set forth the amount of argument time sought.

(c) In certain appeals, the clerk will inform the parties by letter of a particular issue(s) that the panel wishes the parties to address.

(d) The court shall grant a motion requesting rescheduling of the argument only where the moving party shows extraordinary circumstances.

Source: 1988 Court Rule 12.6

Cross-references: FRAP 21(b), 34; 3rd Cir. LAR 27.1; Third Circuit Internal Operating Procedures, Chapter 2 (1994)

Committee Comments: Because the panels are constituted in advance for a specific sitting, rescheduling of an argument results in a second panel being assigned an appeal when one panel has already performed the necessary study of the briefs and appendix. Alternatively, it may result in members of the panel having to travel to Philadelphia at additional government expense, disrupting previously established schedules. Such needless waste of judicial resources underlies this court's precedent of declining to reschedule except upon a showing of extraordinary circumstances. Subsection (c) contains a new provision that counsel in certain cases will be notified prior to the oral argument of a particular issue, if any, that is of concern to the court. The portions of prior Court Rule 12.6 that were repetitive of FRAP have been deleted. Otherwise no substantive change from prior Court Rule 12.6 is intended.

34.2 Continuance

For good cause the court may pass a case listed for oral argument or order its continuance. No stipulation to pass or continue a case will be recognized as binding upon the .

Source: 1988 Court Rule 12.5

Cross-references: FRAP 34; 3rd Cir. LAR 34.1

Committee Comments: No substantive change from prior Court Rule 12.5 is intended.

34.3 No Oral Argument on Motions Except When Ordered

The court shall consider and decide motions upon the motion papers and briefs, and shall not hear oral argument unless ordered by the court or a judge thereof. Counsel may assume there will not be oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Source: 1988 Court Rule 11.1

Cross-references: FRAP 8, 9, 18, 27, 34, 40, 41; 3rd Cir. LAR 27.1

Committee Comments: This rule is identical to 3rd Cir. LAR 27.1. No substantive change from prior Court Rule 11.1 is intended.

LAR 35.0 DETERMINATION OF CAUSES BY THE COURT EN BANC

35.1 Required Statement for Rehearing En Banc

Where the party suggesting rehearing en banc is represented by counsel, the suggestion shall contain, so far as is pertinent, the following statement of counsel:

> "I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court, i.e., the panel's decision is contrary to the decision of this court or the Supreme Court in [citing specifically the case or cases], OR, that this appeal involves a question of exceptional importance, i.e. [set forth in one sentence]."

Source: 1988 Court Rule 22

Cross-references: FRAP 32(b), 35, 40; 3rd Cir. LAR 32.3; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: No substantive change from prior Court Rule 22 is intended.

35.2 Required Attachments to Petition for Rehearing

(a) A petition seeking rehearing en banc shall include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

(b) An original and fourteen (14) copies of a petition for rehearing en banc shall be filed unless otherwise directed by the court.

Source: 1988 Court Rule 22.1

Cross-references: F.R.A.P. 32(b)(c), 35, 40; 3rd Cir. L.A.R. 32.3

Committee Comments: No substantive change from prior Court Rule 22.1 is intended. The addition of subsection (b) is not intended to alter the provisions of IOP 9.5.1 which provide that an unlabeled petition will be construed as requesting both panel rehearing and rehearing en banc.

35.3 Composition of En Banc Quorum

For purposes of determining the majority number necessary to grant a petition for rehearing, all circuit judges currently in regular active service will be counted.

Source: 1988 Court Rule 2.3

Cross-references: FRAP 35; 3rd Cir. LAR Misc. 101.0

Committee Comments: No substantive change from prior Court Rule 2.3 is intended.

35.4 Caution

As noted in FRAP 35, en banc hearing or rehearing of appeals is not favored. Counsel have a duty to the court commensurate with that owed their clients to read with attention and observe with restraint the required statement for rehearing en banc set forth in 3rd Cir. LAR 35.1. Counsel are reminded that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing en banc unless the case meets the rigorous requirements of FRAP 35 and 3rd Cir. LAR 35.1.

Source: None

Cross-references: 28 U.S.C. § 1927; FRAP 35, 38; 3rd Cir. LAR 35.1; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: New provision. This rule is modeled after U.S. Ct. of App. 5th Cir. Rule 35 (1991). The purpose of the rule is to emphasize that the court does not favor requests for hearing or rehearing en banc, and to discourage inappropriate requests from being made.

35.5 Death Penalty Cases

The provisions of 3rd Cir. LAR Misc. 111.7 shall govern all petitions seeking hearing or rehearing by the court en banc in all actions challenging a conviction in which a sentence of death has been imposed.

Source: 3rd Cir. LAR 8.2, 22.2

Cross-Reference: FRAP 35, 3rd Cir. LAR Misc. 111.7

Committee Comments: New provision. To the extent consistent with FRAP and applicable, local procedure in all death penalty proceedings will be governed by 3rd Cir. LAR Misc. 111.0.

LAR 36.0 ENTRY OF JUDGMENT

36.1 Opinions

All written opinions of the court and of the panels thereof shall be filed with and preserved by the clerk. All opinions shall be printed under the supervision of the clerk. Printed opinions need not be copied into the minutes but shall be bound and kept in the Clerk's Office, and when bound shall be deemed to have been recorded.

Source: 1988 Court Rule 16

Cross-references: FRAP 36

Committee Comments: No substantive change from prior Court Rule 16 is intended.

36.2 Copies of Printed Opinions

(a) Parties. Each party to an appeal shall receive one copy of the court's printed opinion free of charge.

(b) Subscriptions. Subscriptions for the printed opinions of this court may be received by the clerk at a fee to be set by order of the court from time to time, which may set a lesser fee for non-profit institutions.

(c) "Public Interest List." Copies of printed opinions will be furnished free of charge to those appearing on a "Public Interest List" established by order of the court in the interest of providing proper and adequate dissemination to the general public.

(d) Other. All other persons desiring a copy of a printed opinion of this court may receive one from the clerk at a fee to be set by order of the court from time to time.

Source: 1988 Court Rules 17.2 and 17.3

Cross-references: FRAP 36

Committee Comments: No substantive change from prior Court Rules 17.2 and 17.3 is intended.

LAR 39.0 COSTS

39.1 Certification or Certiorari to Supreme Court

In all cases certified to the Supreme Court or removed thereto by certiorari, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

Source: 1988 Court Rule 17.1

Cross-references: 28 U.S.C. §§ 1254, 1913, 1920; FRAP 39

Committee Comments: No substantive change from prior Court Rule 17.1 is intended.

39.2 Schedule of Fees and Costs

Pursuant to 28 U.S.C. § 1913, a uniform schedule of fees and costs is prescribed from time to time by the Judicial Conference of the United States. An up-to-date schedule can be found as an annotation to 28 U.S.C. § 1913 in the United States Code, the United States Code Annotated, and West's Federal Civil Judicial Procedure and Rules manual.

Source: 1988 Court Rule 17.2

Cross-references: 28 U.S.C. § 1913; FRAP 39

Committee Comments: The provisions of prior Court Rule 17.2 that were repetitive of 28 U.S.C. § 1913 and FRAP 3(b) and 24(a) have been deleted. The provisions of prior Court Rule 17.2 regarding the costs of printed opinions have been moved to 3rd Cir. LAR 36.2.

39.3 Taxation of Reproduction Costs

The cost of printing or otherwise producing necessary copies of briefs and appendices shall be taxable as follows:

(a) Number of Briefs. Costs will be allowed for ten (10) copies of each brief plus two (2) copies for each party separately represented, unless the court shall direct a greater number of briefs to be filed.

(b) Number of Appendices. Costs will be allowed for four (4) copies of the appendix plus one (l) copy for each party separately represented, unless the court shall direct a greater number of appendices to be filed.

(c) Costs of Reproduction of Briefs and Appendices. In taxing costs for printed or photocopied briefs and appendices, the clerk shall tax costs at the following rates, or at the actual cost, whichever is less, depending upon the manner of reproduction or photocopying:

(1) Reproduction (whether by offset or typography):

Reproduction per page (for 20 copies or less)	$ 4.00
Covers (for 20 copies or less)	$ 50.00
Binding per copy	$ 4.00
Sales tax	Applicable Rate

(2) Photocopying (whether in house or commercial):

Reproduction per page per copy	$ .10
Binding per copy	$ 4.00
Covers (for 20 copies or less)	$ 40.00
Sales Tax	Applicable Rate

(3) In the event a party subsequently corrects deficiencies in either a brief or appendix pursuant to 3rd Cir. LAR Misc. 107.3 and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed.

(d) Other Costs. No other costs associated with briefs and appendices, including the costs of typing, word processing, and preparation of tables and footnotes, shall be allowed for purposes of taxation of costs.

Source: 1988 Court Rule 20.1

Cross-references: 28 U.S.C. § 1920; F.R.A.P. 39

Committee Comments: Sales tax will be included in the costs only when actually paid to a commercial photocopying service. No substantive change from prior Court Rule 20.1 is intended.

39.4 Filing Date; Support for Bill of Costs

(a) The court shall deny untimely bills of cost unless a motion showing good cause is filed with the bill.

(b) Parties shall submit the itemized and verified bill of costs on a standard form to be provided by the clerk.

(c) An answer to objections to a bill of costs may be filed within 10 days of service of the objections.

Source: 1988 Court Rules 20.2, 20.3

Cross-references: FRAP 39

Committee Comments: The portions of prior Court Rules 20.2 and 20.3 that were repetitive of FRAP 39 have been deleted. The rule now specifically allows for an answer to objections, a codification of existing practice. Otherwise, no substantive change from prior Court Rules 20.2 and 20.3 is intended.

LAR 40.0 PETITION FOR PANEL REHEARING

40.1 Required Attachments to Petition for Panel Rehearing

(a) A petition seeking panel rehearing shall include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

(b) An original and three (3) copies of a petition for panel rehearing shall be filed unless otherwise directed by the court.

Source:	New provision
Cross-references:	F.R.A.P. 35, 40
Committee Comments:	This is a new provision designed to create parallel provisions for petitions for panel rehearing and rehearing en banc. It is not intended to alter the provisions of IOP 9.5.1 which provide that an unlabeled petition will be construed as requesting both panel rehearing and rehearing en banc.

LAR 45.0 DUTIES OF CLERKS

45.1 Office - Where Kept

The Clerk's Office shall be kept in the United States Courthouse in the city of Philadelphia.

Source: 1988 Court Rule 5.1

Cross-references: FRAP 45

Committee Comments: No substantive change from prior Court Rule 5.1 is intended.

45.2 Daily Listing of Cases

The clerk shall prepare, under the direction of the court, a list for each session of the court, on which so far as practicable each case shall be listed for argument or submission on a day certain during the week.

Source: 1988 Court Rule 12.2

Cross-references: FRAP 34, 45; 3rd Cir. LAR 34.1

Committee Comments: Language describing the clerk's method of preparing the argument lists has been deleted. Otherwise, no substantive change from prior Court Rule 12.2 is intended.

LAR 46.0 ATTORNEYS

46.1 Admission

(a) Except as the court otherwise directs, practice before the court shall be limited to the members of the bar of this court. Admission to the bar of this court shall be governed by the provisions of FRAP 46 and such other requirements as the court may adopt from time to time, provided, however, that (i) the applicant shall be familiar with the contents of the Federal Rules of Civil Procedure, Criminal Procedure, and Appellate Procedure, as well as with the Local Appellate Rules and Internal Operating Procedures of this court, and (ii) the applicant has read and understood those provisions of the above documents dealing with briefs, motions and appendices. The fee for admission shall be determined by order of the court and shall be payable to the clerk as trustee. All funds received from such applications shall be deposited in the Administrative Fund of the court designated for this purpose.

(b) Unless the court otherwise directs, an attorney shall apply for admission to the bar of this court when the attorney enters an appearance, or at such time as a motion, brief, or other document is filed in this court. An attorney who will argue the appeal, if not previously admitted to the bar of this court, may apply for admission on or before the date of oral argument. Forms prescribed by the court for purpose of admission may be obtained from the clerk of this court.

(c) Any applicant for admission to the bar of this court may be admitted in open court on oral motion, on motion before a single judge of this court, or as the court may otherwise from time to time determine. However, qualified applicants to the bar of this court not previously admitted and who will argue the appeal shall be admitted in open court on oral motion.

(d) An applicant for admission to the bar of this court may be admitted on written or oral motion of a member of the bar of this court or a circuit or district judge of this circuit.

(e) The initial brief filed by each party with the court shall contain a certification that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to this rule.

Source:	1988 Court Rule 9.1
Cross-references:	FRAP 46; 3rd Cir. LAR 28.3(a); Third Circuit Attorney Disciplinary Rules
Committee Comments:	No substantive change from prior Court Rule 9.1 is intended. It is not intended that current practice permitted by law be changed.

46.2 Entry Of Appearance

At the time a case is docketed, counsel for the appellant or petitioner shall file a written appearance which shall include an address where notices and papers may be mailed to or served upon him or her. Not later than ten days after the docketing of the appeal, counsel for all parties in the court or agency below and any other persons entitled to participate in the proceedings as appellees or respondents and desiring to do so, shall file similar written appearances. Any such party or other person on whose behalf counsel fails to file a written appearance within the time fixed by this rule will not be entitled to receive notices or copies of briefs and appendices until a written appearance has been entered for such party. A party desiring to appear without counsel may so notify the clerk of this court in writing and shall be deemed to appear pro se.

Source: 1988 Court Rule 9.2

Cross-references: FRAP 46

Committee Comments: No substantive change from prior Court Rule 9.2 is intended.

46.3 Entry Of Appearance By Eligible Law Students

(a) Eligibility

(1) An eligible law student may enter an appearance in this court on behalf of any indigent prisoner in any civil rights or habeas corpus matter. An indigent who was confined at the commencement of the district court action shall be considered an "indigent prisoner" for purposes of this rule, even though the prisoner may have been subsequently released. The person on whose behalf the student is appearing must indicate in writing his or her consent to that appearance and a supervising lawyer must also indicate in writing his or her approval of that appearance.

(2) In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the court.

(3) An eligible law student may engage in other activities under the general supervision of a member of the bar of this court outside the personal presence of that lawyer for the purpose of preparation of briefs, abstracts, and other documents to be filed in this court, but such documents must be signed by the supervising lawyer.

(4) An eligible law student may participate in oral argument in this court but only in the presence of the supervising lawyer, who shall be prepared to supplement any written or oral statement made by the student.

(b) Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a semester basis.

(3) Be certified by the dean of his or her law school as being of good character and competent legal ability, and as being adequately trained to perform as an eligible law student under this rule.

(4) Be introduced to this court by an attorney admitted to practice in this court and take the following oath or affirmation in open court:

> "I, [name], do swear (or affirm) that I will support the Constitution of the United States, and that, in practicing as an eligible law student under 3rd Cir. LAR 46.3 I shall conduct myself strictly in accordance with the terms of that rule and according to law."

(5) Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the law student renders service, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(6) Certify in writing that the law student has read and is familiar with the rules of professional conduct governing attorneys practicing in the jurisdiction of the supervising attorney.

(c) Certification

(1) The certification of a student by the law school dean shall be filed with the clerk of court and, unless it is sooner withdrawn, shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination of the state where the student's law school is located following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date the student is admitted to the bar. The student shall be responsible for advising the clerk in writing of any change in status or event affecting the student's certification.

(2) The certification may be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the court. It is not necessary that the notice state the cause for withdrawal.

(3) The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(d) Supervision

The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

(1) Be a lawyer in good standing of the bar of this court.

(2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(3) Assist the student to the extent the supervising lawyer considers it necessary.

Source: 1988 Court Rule 9.3

Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

Committee Comments: The Model Rules of Professional Responsibility replace the Canons of Professional Ethics. No substantive change from prior Court Rule 9.3 is intended.

46.4 Signing Papers.

All papers, motions and briefs must be signed by an attorney or by a party appearing pro se.

Source: Fed. R. Civ. P. 11

Cross-references: LAR 28.4

Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires signatures on all papers. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief to ensure that it complies with all federal and local rules. The requirement is interpreted broadly and the attorney of record may designate another person to sign the brief. If a party is represented by multiple counsel, the signature from only one attorney of record is required.

LAR 47.0 RULES BY COURTS OF APPEALS

47.1 Advisory Committee

Any proposed change in the Third Circuit Local Appellate Rules shall be forwarded for comment to the Lawyers Advisory Committee, which constitutes the advisory committee for the study of the rules of practice as required by 28 U.S.C. § 2077(b).

Source: None

Cross-references: 28 U.S.C. § 2077(b)

Committee Comments: The 1988 amendments to the Judicial Code provide for the appointment of an advisory committee to study, inter alia, local rules of practice. 3rd Cir. LAR 47.1 specifies the Lawyers Advisory Committee (LAC) as the statutorily-required review committee, and specifies that any proposed changes in these rules shall be studied by the LAC before they are adopted.

LAR 48.0 SPECIAL MASTERS

48.1 Special Masters

The court may appoint a master to hold hearings, if necessary, and make recommendations as to any auxiliary matter requiring a factual determination in the court of appeals. If the master is not a court officer, the compensation to be allowed to the master shall be fixed by the court, and shall be charged upon such of the parties as the court may direct.

Source: None

Cross-references: FRAP 48

Committee Comments: New provision. This rule is intended to formalize by rule the court's practice of appointing special masters to resolve factual questions where appropriate and needed by the court.

Miscellaneous - 3rd Circuit Local Appellate Rules

LAR MISC. 101.0 CONSTITUTION OF THE COURT - PANELS - QUORUM

101.1 The Court - Judges Who Constitute It

The court consists of the circuit judges in regular active service. The circuit justice and other justices and judges so designated or assigned by the chief judge are eligible to sit as judges of the court.

Source: 1988 Court Rule 2.1

Cross-references: None

Committee Comments: Prior Court Rule 2.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 2.1 is intended.

101.2 Quorum - Adjournment In Absence Of - By Whom Adjourned

A majority of the number of judges authorized to constitute the court or a panel thereof shall constitute a quorum. If a quorum does not attend on any day appointed for holding a session of the court or a panel thereof, any judge who does attend may adjourn the court or panel, or, in the absence of any judges, the clerk may adjourn the court or panel.

Source: 1988 Court Rule 2.5

Cross-references: 28 U.S.C. § 46(d)

Committee Comments: Prior Court Rule 2.5 has no counterpart in FRAP and is therefore classified as Miscellaneous. All references in the prior rule to "divisions" of this court have been changed to "panels." Otherwise, no substantive change from prior Court Rule 2.5 is intended.

LAR MISC. 102.0 SESSIONS

102.1 Sessions - When And Where Held

(a) Stated sessions of the court or of its panels shall be held at Philadelphia or at another place within the circuit commencing on such dates each month as the court shall designate, and in the Virgin Islands commencing at such dates in the months of April and December or as the court shall designate. Pursuant to request of the parties or order of the court, a Virgin Islands case may be heard at another place in the circuit. The stated sessions of the court in the Virgin Islands shall be held in Charlotte Amalie in even-numbered years and in Christiansted in odd-numbered years unless the court directs otherwise.

(b) Special sessions may be held at any time or place within the circuit when so ordered by the court.

Source: 1988 Court Rules 3.2 and 3.3

Cross-references: None

Committee Comments: Prior Court Rules 3.2 and 3.3 have no counterpart in F.R.A.P. and are therefore classified as Miscellaneous. The rule has been revised to give the court the option to schedule its Virgin Islands sessions in months other than April and December. A reference to the "divisions" of this court has been changed to "panels." Otherwise, no substantive change from prior Court Rules 3.2 and 3.3 is intended. The rule has been revised so that the court may sit at other places within the circuit and may, in appropriate circumstances, reverse the place of the Virgin Islands sitting.

LAR MISC. 103.0 MARSHAL, CRIER, AND OTHER OFFICERS

103.1 Who Shall Attend Court

A crier and, if requested, the marshal of the district in which the sessions of the court are held shall be in attendance during the sessions of the court.

Source: 1988 Court Rule 6.1

Cross-references: None

Committee Comments: Prior Court Rule 6.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. A reference to "divisions" of this court has been changed to "panels." Otherwise, no substantive change from prior Court Rule 6.1 is intended.

LAR MISC. 104.0 COURT LIBRARIES

104.1 Regulations Governing Use Of Libraries

The law libraries shall be open during such hours as are reasonable to satisfy the needs of the court, and shall be governed by such regulations as the librarian, with the approval of the court's library committee, may from time to time make effective.

Source: 1988 Court Rule 7.3

Cross-references: None

Committee Comments: Prior Court Rule 7.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 7.3 is intended.

LAR MISC. 105.0 JUDICIAL CONFERENCE OF THE THIRD CIRCUIT

105.1 Attendance At Invitations To The Conference

In addition to judicial participants, attendance at the Judicial Conference of the Third Circuit may be open at the discretion of the chief judge to any member of the bar of any court within the circuit interested in the work of the courts and the administration of justice in the circuit.

Source: 1988 Court Rule 18.2

Cross-references: 28 U.S.C. § 333

Committee Comments: Prior Court Rule 18.2 has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. The rule has been revised to reflect the court's open invitation policy.

LAR MISC. 106.0 FILING OF PAPERS UNDER SEAL

106.1 Necessity; Grand Jury Matters; Previously Impounded Records; Unsealing

(a) Generally. With the exception of matters relating to grand jury investigations, filing of papers under seal without prior court approval is discouraged. If a party believes a portion of a brief or other papers merits treatment under seal, the party shall file a motion setting forth with particularity the reasons why sealing is deemed necessary. Any other party may file objections, if any, within seven (7) days.

(b) Grand Jury Matters. In matters relating to grand jury investigations, when there is inadequate time for a party to file a motion requesting permission to file papers under seal, the party may file briefs and other papers using initials or a John or Jane Doe designation to avoid disclosure of the identity of the applicant or the subject matter of the grand jury investigation. Promptly thereafter, the party shall file a motion requesting permission to use such a designation. All responsive briefs and other papers shall follow the same format until further order of the court.

(c) Records Impounded in the District Court. Motions, briefs and other papers related to any grand jury investigation, presentencing report, and other similar material in a criminal case, which were filed with the district court pursuant to an order of impoundment, and which constitute part of the record transmitted to this court, shall remain subject to the district court's impoundment order and shall be placed under seal by the clerk of this court until further order of this court. When the district court impounds part or all of the papers in a civil case, they will remain under seal in this court for ten (10) days after the filing of the notice of appeal to give counsel an opportunity to file a motion to continue the impoundment, setting forth the reasons therefor.

(d) Unsealing. Any person may file a motion requesting that matters filed under seal be unsealed, stating the reason for such action. The movant shall give all parties to the action notice of the motion. Any party may file and serve objections to unsealing, if any, within seven (7) days after receipt of the motion to unseal.

Source: 1988 Court Rule 21.3

Cross-references: 3rd Cir. LAR 30.3

Committee Comments: Prior Court Rule 21.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. The rule has been revised to place an affirmative obligation to file a motion on the party in a civil matter who wishes to continue the sealing of papers on appeal.

LAR MISC. 107.0 SANCTIONS

107.1 Dismissal Of Appeal For Failure To Pay Certain Fees

(a) The clerk is authorized to dismiss the appeal if the appellant does not pay the docketing fee within fourteen (14) days after docketing, as prescribed by 3rd Cir. LAR 3.3.

(b) The appellant's failure to comply with 3rd Cir. LAR 11.1 regarding transcription fees shall be grounds for dismissal of the appeal.

Source: 1988 Court Rules 15.1, 28.1

Cross-references: FRAP 3(a), 11; 3rd Cir. LAR 3.3

Committee Comments: For the convenience of counsel, all rules relating to sanctions are included in 3rd Cir. LAR Misc. 107.0. Where these rules have some counterpart in FRAP, they are included in both the corresponding 3rd Cir. LAR and Misc. 107.0. Where they have no counterpart in FRAP, they are included in 3rd Cir. LAR Misc. 107.0 only. Only the parts of prior Court Rules 15.1 and 28.1 setting forth sanctions have been included here. No substantive change from prior Court Rules 15.1 and 28.1 is intended.

107.2 Dismissal For Failure To Prosecute

(a) When an appellant fails to comply with the Federal Rules of Appellate Procedure or the Local Appellate Rules of this court, the clerk shall issue written notice to counsel or to the appellant who appears pro se that upon the expiration of fourteen (14) days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the clerk is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the clerk of the district court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is dismissed except by order of the court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed after ten (10) days of the date of dismissal. If the appeal is one taken from the District Court of the Virgin Islands, an additional ten (10) days shall be added to the time limits specified in this paragraph.

(b) Notwithstanding subsection (a), if an appellant fails to comply with the Federal Rules of Appellate Procedure and the Local Appellate Rules with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the clerk is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in subsection (a).

Source: 1988 Court Rule 28.2

Cross-references: FRAP 3(a)

Committee Comments: Court Rule 28.2 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 28.2 is intended.

107.3 Non-Conforming Motion, Brief Or Appendix

If a motion, brief, or appendix submitted for filing does not comply with F.R.A.P. 27 - 32 or 3rd Cir. L.A.R. 27.0 - 32.0, the clerk shall file the document, but notify the party of the need to promptly correct the deficiency. The clerk shall also cite this rule and indicate to the defaulting party how he or she failed to comply. In the event a party subsequently corrects the deficiencies in either a brief or appendix pursuant to this rule and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed. If the party fails or declines to correct the deficiency, the clerk shall refer the defaulting document, any motion or answer by the party, and pertinent correspondence to a judge of this court for review. If the court finds that the party continues not to be in compliance with the rules despite the notice by the clerk, the court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, striking of the document, imposition of costs or disciplinary sanctions upon counsel.

Source: 1988 Court Rule 21.4

Cross-references: F.R.A.P. 3(a), 30(b)(2), 38; 3rd Cir. L.A.R. 27.0 - 32.0

Committee Comments: Court Rule 21.4 has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 21.4 is intended.

107.4 Sanctions Pursuant to F.R.A.P. 30(b)(2)

(a) The court, sua sponte by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion shall do so not later than ten (10) days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which shall be filed within ten (10) days after service of the motion or Rule to Show Cause.

Source:	1988 Court Rule 20.4
Cross-references:	F.R.A.P. 30(b)(2); 3rd Cir. L.A.R. 30.5
Committee Comments:	This Miscellaneous Rule is identical to 3rd Cir. L.A.R. 30.5. No substantive change from prior Court Rule 20.4 is intended.

LAR MISC. 108.0 APPLICATIONS FOR ATTORNEY'S FEES AND EXPENSES

108.1 Application For Fees

(a) Except as otherwise provided by statute, all applications for an award of attorney's fees and other expenses relating to a case filed in this court, regardless of the source of authority for assessment, shall be filed within thirty (30) days after the entry of this court's judgment, unless a timely petition for rehearing or suggestion for rehearing en banc has been filed, in which case a request for attorney's fees shall be filed within fourteen (14) days after the court's disposition of such petition or suggestion. Such application shall be filed with the clerk in the time set forth above whether or not the parties seek further action in the case or further review from any court.

(b) The court shall strictly adhere to the time set forth above and grant exceptions only in extraordinary circumstances.

(c) The application shall include a short statement of the authority pursuant to which the party seeks the award. The application shall also show the nature and extent of services rendered and the amount sought, including an itemized statement in affidavit form from the attorney stating the actual time expended and the rate at which fees are computed, together with a statement of expenses for which reimbursement is sought.

Source: 1988 Court Rule 27.1

Cross-references: None

Committee Comments: Prior Court Rule 27.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.1 is intended. LAR Misc. 108.3 addresses claims for attorney's fees and expenses under the Criminal Justice Act, 18 U.S.C. § 3006A.

108.2 Objections To Applications For Fees

Written objections to an allowance of attorney's fees, setting forth specifically the basis for objection, shall be filed within ten (10) days after service of the application. Thereafter, the court may, when appropriate, either refer the application to the district court or agency where the case originated or refer the application to a master.

Source: 1988 Court Rule 27.2

Cross-references: FRAP 48; 3rd Cir. LAR 48.0

Committee Comments: Prior Court Rule 27.2 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.2 is intended.

108.3 Fee Applications Under 18 U.S.C. § 3006A

All claims for attorney's fees and reimbursement for expenses reasonably incurred by counsel in representing a defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, shall be filed with the clerk no later than 45 days after the conclusion of the attorney's representation. Such claims shall be itemized and prepared on prescribed forms.

Source: 1988 Court Rule 30.1

Cross-references: 18 U.S.C. § 3006A; Third Circuit Criminal Justice Act Plan, Chapter 4(2) (1991)

Committee Comments: Prior Court Rule 30.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 30.1 is intended.

LAR MISC. 109.0 COUNSEL IN DIRECT CRIMINAL APPEALS

109.1 Trial Counsel to Continue Representation on Appeal

Trial counsel in criminal cases, whether retained or appointed, are expected to continue on appeal absent extraordinary circumstances. After the entry of an order of judgment, counsel will not be permitted to withdraw from a direct criminal appeal without specific leave of this court. Trial counsel not members of the bar of this court shall promptly move for admission pursuant to 3rd Cir. LAR 46.1.

Source: None

Cross-references: None

Committee Comments: New provision. 3rd Cir. LAR Misc. 109.1 is designed to remind trial counsel in criminal cases that they are expected to continue the representation of their clients through appeal. "Trial counsel" includes counsel who have represented a client at pretrial, plea or sentencing proceedings.

109.2 Motions by Trial Counsel To Withdraw Representation

(a) Where, upon review of the district court record, trial counsel is persuaded that the appeal presents no issue of even arguable merit, trial counsel may file a motion to withdraw and supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967), which shall be served upon the appellant and the United States. The United States shall file a brief in response. Appellant may also file a brief in response pro se. After all briefs have been filed, the clerk will refer the case to a merits panel. If the panel agrees that the appeal is without merit, it will grant trial counsel's Anders motion, and dispose of the appeal without appointing new counsel. If the panel finds arguable merit to the appeal, it will discharge current counsel, appoint substitute counsel, restore the case to the calendar, and order supplemental briefing.

(b) In cases in which a motion to withdraw filed by counsel appointed under the Criminal Justice Act has been granted after the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the court in its decision determining the case may state that the issues presented in the appeal lack legal merit for purposes of counsel filing a petition for writ of certiorari in the Supreme Court. In such a case counsel shall be under no obligation to file a petition. In all other cases in which counsel appointed under the Criminal Justice Act is of the opinion, in his or her professional judgment, that no issues are present which warrant the filing of a petition for writ of certiorari in the Supreme Court, counsel shall promptly file with the court of appeals a motion stating that opinion with particularity and requesting leave to withdraw. See Austin v. United States, 513 U.S. 5 (1994). Any such motion shall be served on the appellant and the United States.

(c) If the court is of the opinion in a case in which counsel has been appointed under the Criminal Justice Act that there are no issues present which warrant the filing of a petition for writ of certiorari, the court may include a statement to that effect in its decision and counsel may thereafter file the appropriate motion to withdraw. Any such motion shall be served on the appellant and the United States. The absence of a statement by the court with respect to the merit of issues which might be presented to the Supreme Court shall not be construed as an indication of the opinion of the court of appeals of merit or lack of merit of any issue.

Source:	None
Cross-references:	Third Circuit Criminal Justice Act Plan, Chapter 3
Committee Comments:	New provision. 3rd Cir. LAR Misc. 109.2 sets out for the first time the procedure by which trial counsel may withdraw from a non-meritorious criminal appeal pursuant to Anders v. California, 386 U.S. 738 (1967). Addition of sections (b) and (c) was made in response to Austin v. United States, 513 U.S. 5 (1994).

LAR MISC. 110.0 CERTIFICATION OF QUESTIONS OF STATE LAW

110.1 Certification of Questions of State Law

When the procedures of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the procedures of that court, and will stay the case in this court to await the state court's decision whether to accept the question certified. The certification will be made after the briefs are filed in this court. A motion for certification shall be included in the moving party's brief.

LAR MISC. 111.0 DEATH PENALTY CASES

111.1 Scope

This rule, in conjunction with all other applicable rules, shall govern all cases in which this court is required to rule on the imposition of the death penalty. The rule shall be applicable to direct criminal appeals, appeals from the grant or denial of a motion to vacate sentence or a petition for writ of habeas corpus, appeals from the grant or denial of requests for stay or injunctive relief, applications under 28 U.S.C. § 2244 and/or § 2255, and original petitions for writ of habeas corpus.

Source:	1988 Court Rule 29 (Introductory Paragraph)
Cross-references:	18 U.S.C. § 3731, 28 U.S.C. §§ 2254, 2255; Federal Rules of Appellate Procedure; 3rd Cir. LAR; 3rd Cir. Internal Operating Procedures
Committee Comments:	Prior Court Rule 29 (Introductory Paragraph) has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. 3rd Cir. LAR Misc. 111.1 broadens the scope of the prior rule to provide for review of death sentences imposed on federal as well as state prisoners. Where applicable, 3rd Cir. LAR Misc. 111.2 - 111.7 are similarly amended to reflect the broadened scope of 3rd Cir. Misc. 111.0.

111.2 Preliminary Requirements

(a) In aid of this court's potential jurisdiction, each party in any proceeding filed in any district court in this circuit challenging the imposition of a sentence of death pursuant to a federal or state court judgment shall file a "Certificate of Death Penalty Case" with any initial pleading filed in the district court. A certificate shall also be filed by the U.S. Attorney upon return of a verdict of death in a federal criminal case. The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of sentence; and the emergency nature of the proceedings. Upon docketing, the clerk of the district court will transmit a copy of the certificate, together with a copy of the petition, to the clerk of this court.

(b) Upon entry of an appealable order in the district court, the clerk of the district court and appellant's counsel will prepare the record for appeal. The record will be transmitted to this court within five (5) days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1), unless the appealable order is entered within fourteen (14) days of the date

of a scheduled execution, in which case the record shall be transmitted immediately by expedited delivery.

(c) Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this circuit, and in aid of this court's potential jurisdiction, the clerk is directed to monitor the status of the execution and any pending litigation and to establish communications with all parties and relevant state and/or federal courts. Without further order of this court, the clerk may direct parties to lodge with this court up to five copies of (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings.

Source: 1988 Court Rule 29.1

Cross-references: 18 U.S.C. § 3731, 28 U.S.C. §§ 1291, 1292

Committee Comments: Prior Court Rule 29.1 has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. The prior rule's general reference to a "certificate providing specific information" has been changed to the more specific "Certificate of Death Penalty Case" to reflect current practice. Subsection (c) directs the clerk to establish lines of communication with the sentencing court and other concerned parties and to authorize the filing of papers and court records in advance of the court's jurisdiction. This section has been added because some parties in recent cases have challenged the clerk's authority to request information in the absence of a docketed appeal. Because early warning is critical, the court expressly delegates this authority to the clerk pursuant to this local rule.

111.3 Review of Direct Criminal Appeals, Petitions for Writs of Habeas Corpus and Motions to Vacate Sentence

(a) In all such cases, the district court shall articulate the reasons for its disposition of the case in a written opinion, which shall be expeditiously prepared and filed, or by an oral opinion from the bench, which shall be promptly transcribed.

(b) The district court shall state whether a certificate of appealability is granted or denied at the time a final decision is entered on the merits of a claim seeking relief under 28 U.S.C. § 2254 or 2255. If the district court grants the certificate of appealability, it shall state the issues that merit the granting of the certificate and it shall also grant a stay pending disposition of the appeal except as provided in 28 U.S.C. § 2262.

(c) The denial of a certificate of appealability by the district court will not delay consideration by this court of a motion for stay or review of the merits. If the court grants a certificate of appealability, it may thereafter affirm, reverse or remand without further briefing under I.O.P. 10.6 or may direct full briefing and oral argument.

Source: 1988 Court Rule 29.2

Cross-references: 28 U.S.C. § 2254

Committee Comments: Subsection (c) is intended to clarify this court's practice with respect to certificates of appealability in death penalty cases. In accordance with Barefoot v. Estelle, 463 U.S. 880 (1982), the court of appeals may consider, in addition to whether there has been a substantial showing of the denial of a constitutional right, the severity of the sentence in determining whether a certificate of appealability should be issued. Technical changes were made to conform to the Antiterrorism and Effective Death Penalty Act. This rule takes no position on the question of whether a district court can grant or deny a certificate of appealability.

111.4 Motion for Stay of Execution of a Federal or state Court Judgment and Motions to Vacate Orders Granting a Stay

(a) Except as provided in 28 U.S.C. § 2262, motions for stay of execution and motions to vacate stay orders may be filed in docketed requests for certificate of appealability, applications to file a second or successive petition, or appeals from the denial of injunctive relief. No such motion may be entertained unless a case has been docketed in this court. If a stay application is submitted to this court before a district court decision is entered, the clerk shall transmit the motion to the panel designated to hear and dispose of the case.

(b) Documents Required. The movant shall file the original and three (3) copies of a motion and serve all parties. Legible copies of the documents listed in i-x below must be attached to the motion. If time does not permit, the motion may be filed without attachments, but the movant shall file the necessary copies as soon as possible.

(i) The complaint or petition to the district court;

(ii) Each brief or memorandum of authorities filed by both parties in the district court;

(iii) The opinion giving the reasons advanced by the district court for granting or denying relief;

(iv) The district court judgment granting or denying relief;

(v) The application to the district court for a stay;

(vi) The district court order granting or denying a stay, and the statement of reasons for its action;

(vii) The certificate of appealability or, if there is none, the order denying a certificate of appealability;

(viii) A copy of each state or federal court opinion or judgment in cases in which appellant was a party involving any issue presented to this court or, if the ruling was not made in a written opinion or judgment, a copy of the relevant portions of the transcripts;

(ix) A copy of the docket entries of the district court; and

(x) Notice of appeal.

(c) Emergency Motions. Emergency motions or applications, whether addressed to the court or to an individual judge, shall ordinarily be filed with the clerk rather than an individual circuit judge. If time does not permit the filing of a motion or application in person, by mail, or by wire, counsel may communicate with the clerk or a single judge of this court and thereafter shall file the motion with the clerk in writing as promptly as possible. The motion, application, or oral communication shall contain a brief account of the prior actions of this court or judge to which the motion or application, or a substantially similar or related petition for relief, has been submitted.

Source:	1988 Court Rule 29.3
Cross-references:	28 U.S.C. § 2251; F.R.A.P. 8
Committee Comments:	Prior Court Rule 29.3 has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. Except where necessary to reflect the expansion of this rule to reach federal prisoners, no substantive change from prior Court Rule 29.3 is intended.

111.5 Statement of the Case; Exhaustion; Issues Presented

In addition to requirements set forth in 3rd Cir. LAR 28 with respect to the contents of motions and briefs, any application, motion, or brief that may result in either a disposition on the merits or the grant or denial of a stay of execution shall include:

(a) A statement of the case delineating precisely the procedural history of the case;

(b) With respect to state habeas corpus petitions brought pursuant to 28 U.S.C. § 2254, a statement of exhaustion with respect to each issue presented to the district court indicating whether it has been exhausted and if not, what circumstances exist that may justify an exception to the exhaustion requirement.

(c) The parties shall fully address every issue presented to this court. Supplemental briefing will be permitted only by order of this court.

Source: 1988 Court Rule 29.4

Cross-references: None

Committee Comments: Prior Court Rule 29.4 has no counterpart in F.R.A.P. and is therefore classified as Miscellaneous. Except where necessary to reflect the expansion of this rule to reach federal prisoners, no substantive change from prior Court Rule 29.4 is intended.

111.6 Consideration Of Merits

The panel to which an appeal has been assigned shall consider and expressly rule on the merits before vacating or denying a stay of execution.

Source: 1988 Court Rule 29.5

Cross-references: None

Committee Comments: None

111.7 Determination of Causes by the Court En banc

(a) Filing. The filing of petitions seeking hearing or rehearing by the court en banc shall be governed by F.R.A.P. 35 and 3rd Cir. LAR 35. However, because of the difficulty of delivering petitions seeking hearing or rehearing by the court en banc to the judges of the court, the parties are hereby notified that due to these logistical considerations any such petition filed within 48 hours of a scheduled execution may not be delivered to the judges of the court in sufficient time for adjudication prior to the time of the scheduled execution. Petitions for rehearing by the court en banc filed within 48 hours of a scheduled execution shall be processed and distributed by the normal means of delivery used by the court unless the panel handling the case has entered an order for expedited voting in accordance to subsection (b) of this rule.

(b) Consideration. Consideration of a petition seeking hearing or rehearing by the court en banc will be in accordance with the procedures specified in the court's Internal Operating Procedures except that if an execution is scheduled, the original panel which has determined the matter may, upon a majority vote, direct that the time normally allowed for voting to request answers or to grant the petition may be reduced to a time specified by the panel. Upon the entry of an order by the panel reducing the time for voting, the clerk shall immediately transmit the petition and the order to the court by the most expedient means available.

(c) Stays. Generally the court will not enter a stay of execution solely to allow additional time for counsel to prepare, or for the court to consider, a petition for rehearing or for rehearing by the court en banc except as follows:

(1) A stay may be granted in order to allow time for counsel to prepare, or for the court to consider, a petition for rehearing upon majority vote of the original panel. Such a vote will be based upon a determination that there is a reasonable possibility that a majority of the active members of the court would vote to grant rehearing by the court en banc and whether there is a substantial possibility of reversal of its decision, in addition to a likelihood that irreparable harm will result if the decision is not stayed.

(2) In the event that four judges vote to direct the filing of answers to a petition seeking rehearing by the court en banc, the presiding judge of the merits panel will enter a stay.

(3) A stay entered in accordance with 3rd Cir. LAR 8.2 in a direct appeal of a conviction or sentence in a criminal case in which the district court has imposed a sentence of death will remain in effect until the court's mandate issues. The mandate will ordinarily not issue until such time that the time for filing a petition for rehearing has expired, or if such a petition has been filed, until the petition has been determined.

(d) No petition for rehearing shall be filed from the denial of a petition seeking authorization under 28 U.S.C. § 2244 or §2255 to file a second or successive habeas corpus petition under § 2254 or motion to vacate sentence under § 2255.

Source:	6th Cir. Rule 28(k), 11th Cir. IOP 35-11.8 [LAR Misc. 111.7(a)]; 4th Cir. IOP 22.3(b) [LAR Misc. 111.7(c)]; 5th Cir. IOP 8.11 [LAR Misc. 111.7(c)(1)]
Cross-References:	F.R.A.P. 35 and 40; 3rd Cir. LAR 35; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: New Provision. Although the extraordinary nature of death penalty cases is recognized, this section must be read in conjunction with 3rd Cir. LAR 35.4 in which it is emphasized that the court does not favor requests for hearing or rehearing en banc. Because 28 U.S.C. § 2244(b)(3)(D) prohibits the filing of a petition for rehearing from the denial of an application seeking permission to file a second or successive § 2254 or § 2255 petition, there is no conflict with Rule 25(a), F.R.A.P., which states that the clerk may not reject a paper "solely because it is not presented in proper form." The rejection of such a petition for rehearing is not for form, but is required by statute.

111.8 Post-Judgment Motions

(a) Mandate: The panel may order that the mandate of the court issue forthwith or after such time as it may fix.

(b) Stays of Execution: In ruling on a motion for stay to permit the filing and consideration of a petition for writ of certiorari, the panel shall determine whether there is a reasonable probability that the United States Supreme Court would consider the underlying issues sufficiently meritorious to grant the petition.

Source: 1988 Court Rule 29.6

Cross-references: None

Committee Comments: No substantive change from prior Court Rule 29.6 is intended.

111.9 Second or Successive Petitions

The procedures of LAR 22.5 shall apply to the filing of a petition seeking authorization under 28 U.S.C. § 2244 or 2255 to file a second or successive habeas corpus petition under § 2254 or motion to vacate sentence under § 2255 in a death penalty case.

Source:	LAR 22.5
Cross-references:	28 U.S.C. §§ 2244, 2254, and 2255
Committee Comments:	This rule makes clear that the procedures for filing a second or successive petition under 28 U.S.C. § 2244 set forth in LAR 22.5 also apply in death penalty cases and insures that the court will have the documents necessary to decide such petitions.